IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

SUIT NO.2383 OF 1984

New Excelsior Theatre Pvt. Ltd. ..Plaintiffs.
Vs.
M/s. Empire Estates & Ors. ..Defendants.

...

Mr. Shailesh Shah i/b M/s. Law Charter for the Plaintiffs.
None for the Defendants.

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CORAM: DR. D.Y. CHANDRACHUD, J.
14th December, 2006.

P.C. :

1. By an indenture of lease dated 23rd May, 1911 entered into between the Trustees for the Improvement of the City of Bombay (head lessors), Khurshedji Merwanji Baliwala and the City of Bombay Building Co. Ltd. the head lessors demised unto the City of Bombay Building Co. Ltd. land situated on the Esplanade Estate, in the Esplanade Division of 'A' ward in the city of Bombay admeasuring 2823 sq. yds., more particularly described in the First Schedule to the agreement and in Exhibit A to the plaint for a term of 99 years commencing from 15th October, 1907. On 21st September, 1971, an indenture of sublease was executed between Divalibai Bhagwandas and the First Defendant which is a partnership firm of which the Second and Third Defendants are

partners. By and under the agreement an assignment was made in favour of the First Defendant of the leasehold rights for a term of 36 years and three months commencing from 21st September, 1971 at and for a monthly rent of Rs.25,000/-, subject to a right of renewal.

2. On 9th January, 1973, the Second and Third Defendants entered into an agreement with the Fourth Defendant, in respect of the right, title and interest of the vendors in the subleased plot of land together with an incomplete cinema building standing thereon for a consideration of Rs.76,16,000/-. The Fourth Defendant as purchasers are deemed to include inter alia their assignees. Under clause 12 of the agreement it was stipulated that the purchaser shall be entitled to obtain a deed of assignment in respect of the land together with the building standing thereon in favour of the purchasers and/or their nominees including a limited company or a co-operative society.

3. On 21st September, 1976, the Fourth Defendant in turn agreed to assign to the Plaintiffs right, title and interest of the vendors on the plot of land. The Fourth Defendant had demolished

an existing cinema building standing on the land and had constructed a multi storied building inter alia consisting of office blocks, a theatre and other facilities. Under Clause (g) of the agreement, it is provided that the society or a limited company which may thereafter be formed shall cause an indenture of sublease to be executed of the cinema house for a term of 31 years. The Fourth Defendant has sold the office premises in the office block to various third party purchasers whereas the cinema building has been transferred to the Plaintiffs. In paragraph 14 of the plaint it has been stated that the Fourth Defendant has paid to Defendants 1 to 3 the entire consideration due and payable under the agreement dated 9th January, 1973, save and except for an amount of Rs. 1 lac which has also been paid by the Plaintiffs and by Defendant No.5. Similarly, it has been stated that the full consideration due and payable to the Fourth Defendant has been paid by the Plaintiffs (paragraph 15 of the plaint). In paragraph 18 of the plaint it has also been pleaded that Defendants 1 to 3 are ready and willing to fulfill their obligations and to execute necessary documents for effectively transferring the title in the manner agreed to the Plaintiffs and to Defendant No.5.

4. No written statement has been filed by any of the Defendants. All the Defendants have been served. The Plaintiffs have filed an affidavit in lieu of the examination in chief of one of their directors and a compilation of the original documents. The reliefs that have been claimed in the suit are (i) a declaration that the agreements at Exhibits B and D to the plaint are valid and subsisting;(ii) a decree and order to Defendants 1 to 3 to perform their obligations under the agreement at Exh. B; (iii) a decree against the Fourth and Fifth Defendants for transferring the leasehold rights in respect of the land in favour of the Fifth Defendant and simultaneously execute a sublease of the land appurtenant to and beneath the cinema premises in favour of the Plaintiffs; (iv) a decree and order against the Fourth Defendant to convey, sell, assign and transfer the cinema premises in favour of the Plaintiffs. The claim of the Plaintiffs in the suit has been proved on the basis of the oral and documentary evidence on record. The suit shall accordingly stand decreed in terms of prayer clauses (a) to (d).

5. In the event that either Defendants 1 to 3 or, as the case may be, Defendant No.5, fail to comply with their obligation under

the decree of this Court, the Prothonotary & Senior Master shall nominate an officer of the Court to execute the necessary deeds and conveyance upon the expiry of the six months after the date of the order.